

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 9-10-2015

CORAM:

THE HON'BLE MR. JUSTICE P.N.PRAKASH

Criminal Original Petition No.23464 of 2015
M.P.Nos.1 and 2 of 2015

P.G.Murugesan

.. Petitioner

Vs.

Premavathi

.. Respondent

Criminal Original Petition filed under Section 482 of Code of Criminal Procedure with a prayer to call for records relating to STC No.54 of 2013 on the file of the Fast Track Court, Magisterial Level, Dharmapuri and quash the same.

For Petitioner : Mr.C.Munusamy

Reserved on	Pronounced on
6-10-2015	9-10-2015

O R D E R

For the sake of convenience, the parties will be referred to as 'the Complainant' and 'the accused'.

2. The accused purchased some property from the Complainant's family and towards sale consideration, gave a cheque for Rs.14,42,000/- dated 14.3.2013, which when presented, was dishonoured for insufficiency of funds. The complainant issued a statutory notice dated 24.5.2013, which was received by the accused on 4.6.2013 and since the accused did not repay the amount, the Complainant has lodged the present prosecution in STC No.54 of 2013 before the Fast Track Court (Magisterial Level), Dharmapuri, challenging which the accused is before this Court.

3. Mr.C.Munusamy, learned Counsel appearing for the petitioner submitted that the complaint should have been filed fifteen days after the receipt of the statutory notice by the accused, whereas the complaint has been filed before the expiry of fifteen days. This Court is unable to accept this argument because according to the Complainant, the accused received the statutory notice on 4.6.2013 and the complaint itself has been

signed only on 20.6.2013 by the complainant, which is clearly fifteen days after 4.6.2013.

4. Mr.C.Munusamy, learned Counsel further contended that the Complainant has filed O.S.No.10 of 2014 and has obtained a decree and also obtained an order of attachment against the accused, and therefore the present prosecution is an abuse of process of law. In this connection, the learned Counsel has relied upon the judgment of the Supreme Court reported in CDJ 2015 SC 460 (Jadish Mahiral Jagtap v. Consulting Engg. Service (I) P. Ltd & Others) wherein the Hon'ble Supreme Court has stated as follows:

"Apart from this reasoning, we are told at the Bar by learned counsel for respondent No.3-Bank that a civil suit is also instituted. It is a well settled proposition of law if there is a civil litigation between the parties, it is a good ground for non-initiation of criminal proceedings under the provisions of the Negotiable Instruments Act. A civil liability cannot be converted to criminal liability. For the foregoing reasons, this appeal is allowed, the impugned order is set aside and the criminal proceedings initiated against the appellant herein are quashed."

5. Though at the first blush the arguments of Mr.C.Munusamy sounded attractive, yet, on a closure reading of the ruling of the Supreme Court cited above, it could be seen that the Branch Manager of one Bank had issued a demand draft in favour of the Manager of another bank, which was not honoured for the reason that the bank suspected foul play in the issuance of the demand draft. The Hon'ble Supreme Court, after discussing the fact, in paragraph 3 of the decision cited supra, has stated as follows:

"Learned counsel appearing on behalf of the appellant being in the capacity as a Branch Manager of the bank issued the instrument in favour of the Manager, Union Bank of India, therefore, there is no personal liability attached to him to pay the amount of the dishonoured of the said instrument as he has issued the said pay order in the capacity as a Manager of the Bank. The High Court did not accept this contention holding that the said contention does not contain merit and, consequently, does not exonerate the appellant herein. We

do not agree with this view taken by the High Court as the same is contrary to law. Unless the allegation contained in the complaint shows that the instrument which is issued in favour of the opposite party against any liability or a debt prima facie shown, the provisions of Section 138 of the Act are not attracted. This important factual and legal aspect of the matter has not been taken into consideration by the High Court. On this ground alone, the order impugned and the criminal proceedings against the appellant herein are liable to be set aside."

Only in that context the Supreme Court has held as an additional ground that when civil proceedings are pending, criminal prosecution under Section 138 is an abuse of process of law.

6. It is trite law that Section 138 of the Negotiable Instruments Act, 1881 is a penal provision, intended to punish the drawer of the cheque. This remedy is an addition to the regular common law remedy for recovery of money by filing of a suit. The right to file a suit for recovery of money will not stand extinguished on the complainant initiating a prosecution under section 138 of the Act and vice-versa.

7. In the result, this petition is devoid of merits and consequently this petition stands dismissed. Connected miscellaneous petitions are also dismissed.

vr

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

To

1. The Fast Track Court, Magisterial Level, Dharmapuri.
 2. The Public Prosecutor, High Court, Madras.
- + 1 cc to Mr.C.Munusamy, Advocate SR 55171

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